HERBERT CLARK

IBLA 83-367 Decided May 26, 1983

Appeal from decision of California State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. CA MC 60265.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

   Where a mining claim was located in November 1979, the owner was required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), to file on or before Dec. 30, 1980, and on or before Dec. 30 of every calendar year thereafter a notice of intention to hold the claim or evidence of the performance of assessment work on the claim, both in the county where the location notice is of record and in the proper office of the Bureau of Land Management. Failure to file the required instruments within the prescribed time is conclusively deemed to constitute an abandonment of the claim.

2. Administrative Procedure: Burden of Proof -- Evidence: Burden of Proof -- Evidence: Presumptions -- Evidence: Sufficiency -- Mining Claims: Abandonment

   There is an established legal presumption, which is rebuttable, that official acts of public officers are regular. But the presumption is overcome if contrary evidence is presented, and the case is

then in the fact-finder's hands free from any rule. Where BLM has declared appellant's mining claims abandoned and void for failure to record labor affidavits timely, and appellant adduces evidence in support of his contention that the documents were, in fact, timely filed, preponderance of the evidence decides the case. Appellant in this case has not carried his burden of proof by showing incontrovertibly that BLM received the documents.

3. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Herbert Clark, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Herbert Clark appeals the decision of December 16, 1982, wherein the California State Office, Bureau of Land Management (BLM), declared the unpatented Leipzig placer mining claim, CA MC 60265, abandoned and void because no notice of intention to hold the claim or evidence of performance of assessment work on the claim was filed with BLM in 1981 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claim was located November 19, 1979, and was recorded with BLM January 2, 1980. The claim is situated in secs. 1 and 12, T. 19 N., R. 9 E., Mount Diablo meridian, Sierra County, California.

Appellant asserts that in August 1981 he sent the 1981 proof of labor and a quit claim deed transferring title to the Leipzig placer mining claim into his ownership. The proof of labor was recorded in Sierra County on July 31, 1981. The quit claim deed was recorded in Sierra County on August 7, 1981. Appellant is of the opinion that BLM personnel either misfiled or lost

the quit claim deed and the 1981 proof of labor as neither document was in the case file when he examined it in November 1982.

BLM has responded that each mining claim file which lists Herbert Clark as having an interest in the claim was checked carefully but there was no indication that the 1981 proof of labor for the Leipzig placer mining claim or the quit claim deed transferring ownership of the claim to Clark had been received by BLM and misfiled.

[1] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on public land after October 21, 1976, must file a copy of the recorded location notice in the proper office of BLM within 90 days after location, and that prior to December 31 of each year following the calendar year in which the claim was located, he must file for record in the county office where the notice of location is recorded and in the proper office of BLM evidence of assessment work performed or a notice of intention to hold the claim. Failure to submit any of the instruments required by FLPMA within the prescribed time limits is conclusively deemed to constitute an abandonment of the claim. Evelyn Parent, 66 IBLA 147 (1982); Herschel Knapp, 65 IBLA 314 (1982); Francis Skaw, 63 IBLA 235 (1982); Charles A. Behney III, 63 IBLA 231 (1982). See Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. (1981). The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Francis Skaw, supra; Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

The regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Thus, even if a timely mailed instrument was prevented by Postal Service error from reaching the BLM office, that fact would not excuse the claimant's failure to comply with the cited regulations. Glenn D. Graham, 55 IBLA 39 (1981); Everett Yount, 46 IBLA 74 (1980); James E. Yates, 42 IBLA 391 (1979). This Board has repeatedly held that a mining claimant, having chosen the Postal Service as his means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of his documents. Edward P. Murphy, 48 IBLA 211 (1980); Everett Yount, supra. Filing is accomplished only when a document is received and date stamped by BLM. Merely placing a document in the mails does not constitute filing with BLM. 43 CFR 1821.2-2(f).

[2] There are various presumptions which come into play when an appellant alleges timely transmittal of an instrument but BLM has no record of its receipt. On one hand, there is a presumption of regularity which supports the official acts of public officers in the proper discharge of their duties. See, e.g., Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Bernard S. Storper, 60 IBLA 67 (1981); Phillips Petroleum Co., 38 IBLA 344 (1979). On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered.

See, e.g., Donald E. Jordan, 35 IBLA 290 (1978). When these two presumptions have come into conflict, the Board has generally accorded greater weight to the former. See David F. Owen, 31 IBLA 24 (1977).

Thus, where BLM states it did not receive the instruments, the burden is on the appellant to show that the instrument was, in fact, timely received by BLM. See H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981).

Appellant's unsupported statement that he did transmit the 1981 proof of labor and quit claim deed to BLM does not overcome the presumption of regularity. It is the receipt of the instruments that is critical. See 43 CFR 1821.2-2(f).

Appellant may wish to consult with BLM about the possibility of relocating this claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

R. W. Mullen
Administrative Judge